APPENDIX "A"

Opinion

No. 9292

CIVIL ACTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JERRY R. ENGLAND, et al., *Plaintiffs*

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., *Defendants*

Before JONES, Circuit Judge, and CHRISTENBERRY and WRIGHT, District Judges PER CURIAM:

In this proceeding forty chiropractic examiners sought a declaration of their right to practice without complying with the requirements of the Louisiana Medical Practice Act, La. R.S. 37:1261, et seq. They challenged the applicability of the Act to their profession, and its constitutionality if so construed. On remand by the Court of Appeals from an initial judgment of dismissal, *England v. Louisiana State Board of Medical Exam.*, 259 F. 2d 626, rehearing denied, 263 F. 2d 661, certiorari denied, 359 U.S. 1012, this court was convened. Applying principles recently reaffirmed by the Supreme Court in *Meridian* v. *Southern Bell T. & T. Co.*, 358 U.S. 639; *Louisiana P. & L. Co.* v. *Thibodaux, sic, City*, 360 U.S. 25; *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167; and *Martin* v. *Creasy*, 360 U.S. 219, we abstained and remitted the parties to the courts of Louisiana so that those tribunals might "determine the issues here presented." Jurisdiction was retained "to take such steps as may be necessary

for the just disposition of the litigation should anything prevent a prompt state court determination." *England* v. *Louisiana State Board of Medical Examiners*, Ed., *sic*, La., 180 F. Supp. 121.

Appropriate proceedings were filed in the state courts and the Louisiana Court of Appeal ultimately found against plaintiffs' contention, expressly holding that the application of the Medical Practice Act to chiropractic examiners, though it effectively deprived them of an opportunity to practice their healing art, did not violate any provision of the Federal Constitution. *England* v. *Louisiana State Board of Medical Exam.*, La. App., 126 So. 2d 51. On February 15, 1961, the Louisiana Supreme Court refused to review that decision, stating "The judgment of the Court of Appeal is correct." La. Sup. Ct. No. 45,509. "No appeal was taken to the Supreme Court of the United States. Instead, plaintiffs now return to this court and ask us to proceed to adjudicate the constitutional issues. Defendants pray for dismissal of the cause."

In this posture, the case points up the dilemma of a litigant who has invoked the jurisdiction of a federal court to assert a claimed constitutional right and finds himself remitted to the state tribunals. On the one hand, in view of *Government Employees* v. *Windsor*, 353 U.S. 364, he dare not restrict his state court case to local law issues. On the other, if, as required by *Windsor*, he raises the federal questions there, well established principles will bar a relitigation of those issues in the United States District Court. *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413. Since, in the usual case, no question not already passed on by the state courts will remain, he is thereby effectively deprived of a federal forum for the adjudication of his federal claims. Cf. *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, 50.

It is true that in most such cases an appeal of right to the United States Supreme Court is given, 28 U.S.C. 1257(2), but that is no more than the plaintiff would have

had even if he had never invoked the jurisdiction of the United States District Court. Moreover, there are cases where discretionary certiorari is the only available remedy from an adverse state court decision. 28 U.S.C. 1257 (3).

All this seems contrary to the principle underlying the doctrine of abstention, which has been said not to "involve the abdication of federal jurisdiction; but only the postponement of its exercise." *Harrison* v. *N.A.A.C.P.*, supra, 177. Nor does this procedure accord with the historic function of abstention to assure "that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law." *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101, 105. Yet we can see no way out of the dilemma if the state courts must consider the constitutional issues together with local law questions.

Thus, here, since the courts of Louisiana have passed on all issues raised, including the claims of deprivation under the Federal Constitution, this Court, having no power to review those proceedings, must dismiss the complaint. The proper remedy was by appeal to the Supreme Court of the United States.

Defendants' motion to dismiss granted.

WARREN L. JONES
United States Circuit Judge

J. SKELLY WRIGHT
United States District Judge

HERBERT W. CHRISTENBERRY
United States District Judge

New Orleans, Louisiana
May 31, 1961